

Internal Revenue Service

Number: **200733003**

Release Date: 8/17/2007

Index Number: 453.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-102554-07

Date:

May 18, 2007

In Re:

LEGEND:

Taxpayer =

X =

Year 1 =

Date y =

Tax Director =

Senior Vice President and CFO =

a =

b =

c =

d =

z =

Dear _____ :

This is in reply to Taxpayer's letter of December 28, 2006, requesting an extension of time for Taxpayer to elect out of the installment method. The ruling was requested under § 453(d)(2) of the Internal Revenue Code and § 15a.453-1(d)(3) of the Temporary Income Tax Regulations. Taxpayer submitted additional information in support of its ruling request on April 16, 2007, and on May 8, 2007.

FACTS:

Under penalties of perjury, Taxpayer, through its Tax Director and its Senior Vice President and CFO, have represented the following facts:

Taxpayer is on the calendar year and uses the accrual method of accounting.

Taxpayer is a 2-member Delaware limited liability company (LLC), taxed as a partnership. Taxpayer is part of a multi-unit Delaware series LLC, X. X was formed in Year 1 in connection with the acquisition of loans from a large Bankruptcy Estate.

In Year 1, Taxpayer purchased approximately \$a of loans from Bankruptcy Estate. Taxpayer, on date y, sold the loans to an unrelated third party for an upfront payment of approximately \$b, plus certain additional payments based on the third party's profit from re-selling or securitizing the loans. The additional Year 1 payment received by Taxpayer was approximately \$c. Consequently, the total amount received by Taxpayer in Year 1 was approximately \$d, an amount in excess of Taxpayer's basis in the loans.

Taxpayer knew in Year 1 that additional payments might be received in later years, but did not know either the amount or the duration of those additional payments. Because Taxpayer was uncertain of the amount or duration of any additional payments, Taxpayer conservatively decided to elect out of the installment method.

It is apparent from the facts, representations, and affidavits submitted by Taxpayer that Taxpayer intended to elect out of installment method treatment for the date y transaction. However, Tax Director, due to a number of circumstances, mistakenly failed to make an effective election on behalf of Taxpayer. Taxpayer now seeks a ruling granting it an extension of time to elect out of the installment method on its Year 1 return. Taxpayer's ruling request was filed within z months of the error being discovered.

LAW AND ANALYSIS:

Section 453(a) of the Code provides that, except as otherwise provided, income from an installment sale shall be taken into account under the installment method. Section 453(d)(1) provides, however, that the installment method will not apply to a disposition if the taxpayer elects to not have the installment method apply to such disposition. Under § 453(d)(2), except as otherwise provided by regulations, an election out of the installment method with respect to a disposition may be made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of tax for the taxable year in which the disposition occurs.

Section 15a.453-1(d)(1)(i) provides that the election out of the installment method must be made in the manner prescribed by the appropriate forms for the taxpayer's return for the taxable year of the sale. A taxpayer who reports an amount realized equal to the selling price including the full face amount of any installment obligation on the tax return filed for the taxable year in which an installment sale occurs will be considered to have made an effective election.

Under § 15a.453-1(d)(3)(ii), elections after the due date prescribed by law (including extensions) for filing the taxpayer's return will be permitted only in those rare circumstances when the Internal Revenue Service concludes that the taxpayer had good cause for failing to make a timely election.

In this situation, it was always the intention of Taxpayer to elect out of the installment method. Further, once Tax Director realized that an effective election had mistakenly not been made, he and Taxpayer acted promptly in filing this ruling request. We have determined that this request for an extension to make the election out of the installment method does not involve hindsight and that Taxpayer has established good cause for being granted an extension to file an election.

Accordingly, based on the facts presented and the representations made, Taxpayer is granted an extension to elect out of the installment method on Taxpayer's Year 1 return. This extension is conditioned on Taxpayer making its election on its Year 1 federal income tax return within 75 days of the date of this letter.

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110. Pursuant to a power of attorney submitted by Taxpayer, we are sending a copy of this letter to the taxpayer's authorized representative.

No opinion is expressed or implied concerning the tax consequences of any aspect of any item not specifically discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes